Supreme Court, U.S.
FILED

02 681 OCT 31 2002

OFFICE OF THE CLERK

No. _____

In the Supreme Court of the United States

ARCADE TEXTILES, INC., ET AL.,
Petitioners,

v.

SECURITY INSURANCE COMPANY OF HARTFORD, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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33 pp

QUESTIONS PRESENTED

Whether prejudgment interest awarded in a statutory interpleader action with jurisdiction based upon 28 U.S.C. § 1335 should be calculated in accordance with state substantive law.

PARTIES TO THE PROCEEDING

Petitioner

Petitioners Arcade Textiles, Inc. [hereinafter "Arcade"] and York County Industries, Ltd. [hereinafter "York"] are privately held corporations organized and existing under the laws of the State of South Carolina, with their principal places of business located in Rock Hill, South Carolina. Arcade and York were among numerous Defendants in the District Court, and were Defendants-Appellants in the Fourth Circuit Court of Appeals.

Respondent

Respondent Security Insurance Company of Hartford [hereinafter "Security"] is a publicly held corporation that is wholly owned by Royal & Sun Alliance Insurance Group of the United Kingdom. Petitioner is unaware of any publicly held company owning ten (10%) percent or more of said corporation's stock. Respondent Security was the Plaintiff in the District Court, and the Plaintiff-Appellee in the Fourth Circuit Court of Appeals.

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Petitioner respectfully petitions for a Writ of Certiorari to review the judgment of the Fourth Circuit Court of Appeals in this case.

OPINIONS BELOW

The unpublished opinion of the Fourth Circuit (App. B at 5a) is reported at 40 Fed.Appx. 767, 2002 WL 1473417 (4th Cir. July 10, 2002) (per curiam). The District Court order (App. C at 13a) is unreported.

STATEMENT OF JURISDICTION

The judgment of the Fourth Circuit Court of Appeals was entered on July 10, 2002. The Court of Appeals entered an order denying a timely petition for rehearing and rehearing *en banc* on August 6, 2002 (App. A at 1a).

The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following statutory provision:

28 U.S.C. § 1335, statutory interpleader, which provides "[t]he district courts shall have original jurisdiction of any civil action of interpleader...if, (1) [t]wo or more adverse claimants, of diverse citizenship as defined in section 1332 of this title [28 U.S.C. § 1332], are claiming or may claim to be entitled to such money or property...."

STATEMENT OF THE CASE

This litigation arose as the result of a catastrophic fire that destroyed a textile mill in Rock Hill, South Carolina on November 3, 1997. The mill was operated by Arcade and contained substantial amounts of equipment and heavy machinery owned by York along with goods belonging to numerous customers of Arcade in various stages of finishing. Arcade and York were named insureds under the Business Personal Property insurance coverage provided by Security, with a policy amount of $4,420,000.00.

On September 1, 1998, Security filed a statutory interpleader action pursuant to 28 U.S.C. § 1335 in the United States District Court, District of South Carolina, [hereinafter "District Court"] requesting a judicial determination of which potential claimants were entitled to recover policy proceeds, and in what amounts. At the time of the filing of the action, Security submitted a bond for the policy amount, retaining the actual Business Personal Property proceeds for their own use. The bond obtained by Security did not bear interest for the benefit of the claimants to the fund, and thus, the answer filed by Arcade and York to Security's Complaint for Interpleader contained a counterclaim for interest on the policy proceeds.

On January 31, 2001, NationsBank, N.A., a named co-defendant in the interpleader action, filed a motion requesting an order that would require Security to pay interest on the policy proceeds at the South Carolina statutory prejudgment interest rate of 8.75% per annum [hereinafter "Statutory Rate"]. Security's opposition to such motion admitted that interest should be paid, but asserted that interest should be calculated at the federal floating rate rather than in accordance with state law, and that interest should not begin

to accrue until the date of the filing of the interpleader action. On February 23, 2001, Arcade and York submitted a memorandum concurring in NationsBank's request for interest at the Statutory Rate, and arguing that interest should begin to accrue as of November 4, 1997, the date payment was demandable under South Carolina law. By Consent Order filed March 19, 2001, Security deposited $687,849.12 with the District Court for interest, calculated at the nominal federal rate rather than the Statutory Rate, and conceded that such sum was the least amount of interest it would owe.

On April 3, 2001 the District Court heard oral argument with regard to the interest rate to be applied and the date from which such interest should run. At the conclusion of the hearing, the District Court ruled that no additional interest was required on the deposited funds, and memorialized such ruling by Order filed April 9, 2001. App. C, at 13a. Subsequently, the parties resolved their claims to the interpled fund and entered into a consent order whereby the proceeds were disbursed and the right to appeal the District Court's determination of interest was preserved.

On appeal, the Fourth Circuit held that despite the admission by Security that prejudgment interest was warranted, it was not mandatory for the District Court to make such an award, and therefore, the District Court was free to award interest in any amount it chose. App. B, at 12a. As a result, the amount of interest actually awarded was based on the federal rate, and was not determined in accordance with the underlying law of the State of South Carolina.

Thereafter, Petitioner timely petitioned for rehearing or rehearing *en banc*, which was denied on August 6, 2002. App. A, at 1a.

REASONS FOR GRANTING THE WRIT

I. The Decision of the Fourth Circuit Court of Appeals Conflicts with Decisions in Other Courts With Regard to the Award of Prejudgment Interest in Statutory Interpleader Actions.

This Court has previously held that "[t]he usual and general rule is that any interest on an interpleaded and deposited fund follows the principal and is to be allocated to those who are ultimately to be the owners of that principal." *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 162 (1980) *citing James Talcott, Inc. v. Allahabad Bank, Ltd.*, 444 F.2d 451, 463 (5th Cir.) cert. denied *sub nom. City Trade & Industries, Ltd. v. Allahabad Bank, Ltd.*, 404 U.S. 940 (1971); *Murphy v. Travelers Ins. Co.*, 534 F.2d 1155, 1165 (5th Cir. 1976); *In re Brooks & Woodington, Inc.*, 505 F.2d 794, 799 (7th Cir. 1974); *McMillan v. Robeson County*, 262 N.C. 413, 417, 137 S.E.2d 105, 108 (1964); *Sellers v. Harris County*, 483 S.W.2d 242, 243 (Tex. 1972); *Southern Oregon Co. v. Gage*, 100 Or. 424, 433, 197 P. 276, 279 (1921); *Board of Law Library Trustees v. Lowery*, 67 Cal.App.2d 480, 154 P.2d 719 (1945); *Kiernan v. Cleland*, 47 Idaho 200, 273 P. 938 (1929).

Various courts have found that the mere posting of a bond does not operate to stop the accrual of interest in an interpleader action. "In order to stop the accruing of interest, a tender must be an 'unconditional tender' which effectively deprives the stakeholder of dominion over the fund." *Bauer v. Uniroyal Tire Co.*, 630 F.2d 1287, 1291-92 (8th Cir. 1980) *citing Murphy v. Travelers Insurance Co.*, 534 F.2d 1155, 1165 (5th Cir. 1976); *Phillips Petroleum Co. v. Adams*, 513 F.2d 355, 370 (5th Cir. 1975); *Equifax, Inc. v. Luster*, 463

F.Supp. 352, 356-57 (E.D.Ark. 1978); *Equitable Life Assurance Society of the United States v. Miller*, 229 F.Supp. 1018, 1021 (D.Minn. 1964); *Pittsburg Plate Glass Co. v. Leary*, 126 N.W. 271 (S.D. 1910); *see also Great Lakes Transit Corporation v. Marceau*, 154 F.2d 623, 626-27 (2nd Cir. 1946) ("Plaintiff chose to retain the use of the $4500.00 and rather than pay the money into court, it gave a bond. Plaintiff is entitled to receive the cost of the premiums on that bond, but not to an order stopping the running of the interest against it.").

Similarly, where a plaintiff deposited a bond with the clerk of court for an interpled amount, then argued that it should not have to pay interest, one court held "in general, equitable considerations strongly favor a ruling that a stakeholder should be liable for interest on the disputed amount, less the premium of the bond, simply because the stakeholder has enjoyed unfettered use of a fund that admittedly belongs to one of the claimants." *Amoco Transport Co. v. Dietze, Inc.*, 582 F.Supp. 804, 806 (S.D.N.Y. 1984) *citing United States v. United Drill & Tool Corp.*, 183 F.2d 998, 999 (D.C.Cir. 1950) (citing *Young v. Godbe*, 82 U.S. (15 Wall) 562, 565 (1873) (a creditor is entitled to interest from the time the debt ought to be paid as compensation for loss of use of his money)).

In expressly recognizing the necessity for awarding prejudgment interest on interpled funds that are bonded into the court rather than actually depositing the funds with the court clerk, one court has held that "[i]t is well established that a party who has had the use of the disputed funds for a period of time must pay interest on the portion of the fund finally determined to belong to his adversary." *Lee National Corp. v. Kansas City Southern Industries*, 50 F.R.D. 412, 413 (S.D.N.Y. 1970), *quoting United States v. Eastern Air*

Lines, Inc., 366 F.2d 316, 321 (2nd Cir. 1966)

In addressing the purpose an award of prejudgment interest is meant to serve, this Court has held that "[p]rejudgment interest serves to compensate for the loss of use of money due as damages from the time the claim accrues until judgment is entered, thereby achieving full compensation for the injury those damages are intended to redress." *West Virginia v. United States*, 479 U.S. 305, 310-11 n. 2 (1987). In the instant action, the fire occurred on November 3, 1997, yet Security did not deposit any funds with the District Court until March 19, 2001. Thus, Security retained the use of the $4.42 million policy proceeds, and any profits derived therefrom, for in excess of three years, all at the expense of the actual claimants to the proceeds, who received less than 62% of the agreed value of their claims. As such, an award of prejudgment interest was merited in this action, a fact that Security conceded upon posting the minimum interest amount.

The premise underlying the decision of the Fourth Circuit is that an award of prejudgment interest on funds bonded into court in a statutory interpleader action is unnecessary. App. B at 12a ("although the dispute of the parties concerned only the *rate* of interest, their arguments were posed in terms of the broader question of whether Security should be obligated to pay prejudgment interest *at all*") (italics in original). Such decision by the Fourth Circuit is therefore in conflict with the decisions of other circuits confronted with similar circumstances, and is in direct opposition to Security's concession that prejudgment interest on the interpled fund was warranted.

II. The Decision of the Fourth Circuit Court of Appeals Conflicts with Decisions in Other Courts With Regard to the Calculation of Pre-judgment Interest in Statutory Interpleader Actions.

In an action where jurisdiction was based upon federal interpleader, this Court has previously held that "we are of the view that the federal courts in diversity of citizenship cases are governed by the conflict of laws rules of the courts of the states in which they sit." *Griffin v. McCoach*, 313 U.S. 498, 503 (1941). Similarly, other courts have found that state law applies to statutory interpleader actions "because the federal interpleader statute is merely a special brand of diversity jurisdiction." *Whirlpool Corp. v. Ritter*, 929 F.2d 1318, 1321 (8th Cir. 1991) (citing *Griffin*). *See also, Equitable Life Assur. Soc. of U.S. v. McKay*, 837 F.2d 904, 905 (9th Cir. 1988) ("Because this action is an interpleader action brought under 28 U.S.C. § 1335, the federal district court was required to apply the substantive law that a court of the forum state would apply."); *Bluff Creek Oil Co. v. Green*, 257 F.2d 83, 85 (5th Cir. 1958); *Amoco Transport Co. v. Dietze, Inc.*, 582 F.Supp. 804, 806 (S.D.N.Y.) 1984) ("[F]ederal interpleader actions, premised upon diversity of citizenship of the claimants, are no different than ordinary diversity actions in that state substantive law is to be applied. In particular, the substantive law of the forum state should be applied to determine whether interest is due."); *Great American Ins. Co. v. Spraycraft, Inc.*, 844 F.Supp. 1188, 1191 (S.D.Ohio 1994) ("In any action in which jurisdiction is premised upon diversity of citizenship, a federal district court should apply the law of the forum state, including its choice of law principles. That rule applies in actions brought under the federal interpleader statute.").

The Fourth Circuit itself has previously recognized that state law governs the award of prejudgment interest in a diversity case. *Hitachi Credit America Corp. v. Signet Bank*, 166 F.3d 614, 633(4th Cir. 1999); *United States v. Dollar Rent A Car Sys., Inc.*, 712 F.2d 938, 940 (4th Cir. 1983) ("[c]ourts have held that state law applies to questions involving prejudgment interest in diversity cases") *citing Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 497 (1941); *APAC-Carolina, Inc. v. Towns of Allendale and Fairfax, S.C.*, 868 F.Supp. 815, 826 (D.S.C. 1993) ("In diversity cases, 'state law governs the prejudgment interest rate.'") (citing *Loft v. Lapidus*, 936 F.2d 633, 639 (1st Cir. 1991); *McDermott v. Middle East Carpet Co.*, 811 F.2d 1422, 1429 (11th Cir. 1987); *West v. Harris*, 573 F.2d 873, 884 (5th Cir. 1978), *cert. denied,* 440 U.S. 946 (1979)); *cf. Sadighi v. Daghighfekr*, 66 F.Supp.2d 752, 765 (D.S.C. 1999) (noting the court is free to choose between the state and federal interest rate only in cases involving federal questions).

Here, Security conceded that interest on the interpled fund was warranted, yet rather than applying state law to calculate the interest amount where jurisdiction was premised on diversity, the Fourth Circuit Court of Appeals found that interest calculations based upon the federal floating rate were proper. There is no logical way to reconcile the decision of the Fourth Circuit with the conflicting decisions of the other courts, including this Court's decision in *Erie Railroad Company v. Tompkins*, 304 U.S. 64 (1938) (a federal court sitting in a diversity action is required to apply the substantive law of the forum state).

III. The Question Presented is Important.

Under the decision of the Fourth Circuit, neither the stakeholder nor the claimants in an interpleader action have

any protection by virtue of being able to calculate with any certainty the amount of interest that may ultimately be deemed to have accrued on an interplead fund. Without guidance from this Court, such calculations are subject to the whim of the trial judge within the Fourth Circuit, who has the ability to award interest in amounts either lesser or greater than those required under state substantive law.

Moreover, allowing prejudgment interest to be calculated based upon the nominal interest rate of the Court Registry Investment System, which follows the interest rate of three-month treasury bills, gives stakeholders an incentive to initiate lengthy interpleader actions so as to prolong the stakeholder's ability to utilize and profit from funds to which it has no claim. Interpleader is intended to protect an innocent stakeholder from liability from competing claimants, not as a means for allowing the stakeholder to profit by retaining possession of property to which, by the very nature of interpleader itself, the stakeholder has no claim.

CONCLUSION

For the reasons set forth above, Arcade and York respectfully request that the Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 01-2101
CA-98-2545-0-17

[Filed August 6, 2002]

SECURITY INSURANCE COMPANY OF HARTFORD,
Plaintiff-Appellee,

v.

ARCADE TEXTILES, INCORPORATED; YORK COUNTY INDUSTRIES, LIMITED,
Defendants-Appellants,

and

NATIONSBANK, N.A.; ABSOLUTELY TERRY COMPANY, INCORPORATED; AMERICAN SPIRIT INDUSTRIES, INCORPORATED; AMERICAN SPIRIT FASHIONS, LIMITED; BARAS JERSEY, INCORPORATED; BEATE REALTY CORPORATION; BLOCK'S FASHION FABRICS, INCORPORATED; BRASKINGS INCORPORATED; BRITANNIA MILLS, INCORPORATED; BROOKS

TEXTILES, INCORPORATED; C&L OF NEW)
YORK CORPORATION; CHARLENE)
FABRICS CORPORATION; CONTEMPORA)
FABRICS, INCORPORATED; CREATIVE)
FABRIC SERVICES, LLC; CYBER)
KNITS, INCORPORATED; DYNASTY)
USA, INCORPORATED; ESSEX)
FABRICS, INCORPORATED; ETHNIX NEW)
YORK, INCORPORATED; FABRIC AND)
FABRIC, INCORPORATED; FAVRILE)
FABRICS OF FLORIDA, INCORPORATED;)
KARMAR FABRICS, INCORPORATED; KNIT)
IDEAS, INCORPORATED; KUTTNER)
PRINTS, INCORPORATED; LA CENTURY)
TEXTILES, INCORPORATED;)
LEAMARK, INCORPORATED; LIBA)
FABRICS CORPORATION; PLAN B)
TEXTILES, LLC; PAUL GOTTLIEB &)
COMPANY, INCORPORATED; PLAZA)
TEXTILE CORPORATION; RG TEXTILE)
COMPANY, INCORPORATED; RPJ)
SPORTSWEAR, INCORPORATED; ROSS)
SPORTS WEAR, INCORPORATED;)
SPANTECH FABRICS CORPORATION;)
SPORTSWEAR, INCORPORATED;)
STARENSIER, INCORPORATED;)
STYLETEX, INCORPORATED; SUMMIT)
KNITTING MILLS, INCORPORATED;)
SWINGTIME, INCORPORATED; SYMPHONY)
FABRICS CORPORATION; TODD)
KNITTING CORPORATION; TRIPLE TEX)
FABRICS; UNIVERSAL MFG)
CORPORATION; VERATEX,)
INCORPORATED; FABRIC ZONE,)
INCORPORATED; AQUATIC KNITS,)

INCORPORATED; D. FOXX & COMPANY, INCORPORATED; EPIC TEXTILES INTERNATIONAL, LLC; HAMPTON TRANSFER PRINTS, INCORPORATED; HLC INDUSTRIES; LJJ INCORPORATED; MARKBILT INCORPORATED; PICADILLY FASHIONS; RUBYS COSTUME COMPANY; RUSSELL A. ROBERTS AND COMPANY; VOGUE TEXTILES, INCORPORATED; EUROPEAN AMERICAN BANK; BASSIRAT, INCORPORATED, d/b/a Styletex, Incorporated,
Defendants,

ATLANTIC MUTUAL INSURANCE COMPANY; COMMERCIAL UNION INSURANCE COMPANY; FEDERAL INSURANCE COMPANY; LIBERTY MUTUAL INSURANCE COMPANY; GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA; HARTFORD FIRE INSURANCE COMPANY; VIGILANT INSURANCE COMPANY; ZURICH INSURANCE COMPANY; GREAT NORTHERN INSURANCE COMPANY; TRAVELERS INDEMNITY COMPANY OF AMERICA; ADJUSTERS INTERNATIONAL,
Intervenors-Defendants.

ON PETITION FOR REHEARING AND REHEARING EN BANC

The appellants' petition for rehearing and rehearing en banc was submitted to this Court. As no member of this

Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

For the Court,

/s/ _____
Patricia S. Connor
Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 01-2101

[Filed July 10, 2002]

SECURITY INSURANCE COMPANY OF HARTFORD,
Plaintiff-Appellee,

v.

ARCADE TEXTILES, INCORPORATED; YORK COUNTY INDUSTRIES, LIMITED,
Defendants-Appellants,

and

NATIONSBANK, N.A.; ABSOLUTELY TERRY COMPANY, INCORPORATED; AMERICAN SPIRIT INDUSTRIES, INCORPORATED; AMERICAN SPIRIT FASHIONS, LIMITED; BARAS JERSEY, INCORPORATED; BEATE REALTY CORPORATION; BLOCK'S FASHION FABRICS, INCORPORATED; BRASKINGS INCORPORATED; BRITANNIA MILLS, INCORPORATED; BROOKS TEXTILES, INCORPORATED; C&L OF NEW

YORK CORPORATION; CHARLENE)
FABRICS CORPORATION; CONTEMPORA)
FABRICS, INCORPORATED; CREATIVE)
FABRIC SERVICES, LLC; CYBER)
KNITS, INCORPORATED; DYNASTY)
USA, INCORPORATED; ESSEX)
FABRICS, INCORPORATED; ETHNIX NEW)
YORK, INCORPORATED; FABRIC AND)
FABRIC, INCORPORATED; FAVRILE)
FABRICS OF FLORIDA, INCORPORATED;)
KARMAR FABRICS, INCORPORATED; KNIT)
IDEAS, INCORPORATED; KUTTNER)
PRINTS, INCORPORATED; LA CENTURY)
TEXTILES, INCORPORATED;)
LEAMARK, INCORPORATED; LIBA)
FABRICS CORPORATION; PLAN B)
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COMPANY, INCORPORATED; PLAZA)
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COMPANY, INCORPORATED; RPJ)
SPORTSWEAR, INCORPORATED; ROSS)
SPORTS WEAR, INCORPORATED;)
SPANTECH FABRICS CORPORATION;)
SPORTSWEAR, INCORPORATED;)
STARENSIER, INCORPORATED;)
STYLETEX, INCORPORATED; SUMMIT)
KNITTING MILLS, INCORPORATED;)
SWINGTIME, INCORPORATED; SYMPHONY)
FABRICS CORPORATION; TODD)
KNITTING CORPORATION; TRIPLE TEX)
FABRICS; UNIVERSAL MFG)
CORPORATION; VERATEX,)
INCORPORATED; FABRIC ZONE,)
INCORPORATED; AQUATIC KNITS,)
INCORPORATED; D. FOXX &)

COMPANY, INCORPORATED; EPIC)
TEXTILES INTERNATIONAL, LLC;)
HAMPTON TRANSFER PRINTS,)
INCORPORATED; HLC INDUSTRIES;)
LJJ INCORPORATED; MARKBILT)
INCORPORATED; PICADILLY FASHIONS;)
RUBYS COSTUME COMPANY; RUSSELL A.)
ROBERTS AND COMPANY; VOGUE)
TEXTILES, INCORPORATED; EUROPEAN)
AMERICAN BANK; BASSIRAT,)
INCORPORATED, d/b/a Styletex, Incorporated,)
Defendants,)
)
ATLANTIC MUTUAL INSURANCE)
COMPANY; COMMERCIAL UNION)
INSURANCE COMPANY; FEDERAL)
INSURANCE COMPANY; LIBERTY)
MUTUAL INSURANCE COMPANY;)
GENERAL ACCIDENT INSURANCE)
COMPANY OF AMERICA; HARTFORD)
FIRE INSURANCE COMPANY; VIGILANT)
INSURANCE COMPANY; ZURICH)
INSURANCE COMPANY; GREAT)
NORTHERN INSURANCE COMPANY;)
TRAVELERS INDEMNITY COMPANY OF)
AMERICA; ADJUSTERS INTERNATIONAL,)
Intervenors-Defendants.)
_____)

Appeal from the United States District Court
for the District of South Carolina, at Rock Hill
Joseph F. Anderson, Jr., Chief District Judge
(CA-98-2545-0-17)

JUDGES:
Before WILKINS, NIEMEYER, and KING, Circuit Judges.

OPINION

PER CURIAM:

Appellants Arcade Textiles, Incorporated (Arcade) and York County Industries, Limited (York), appeal the resolution of a dispute over the amount of prejudgment interest owed in this statutory interpleader action, *see* 28 U.S.C.A. § 1335 (West 1993). We affirm.

I.

Arcade owned and operated a textile mill in Rock Hill, South Carolina. Located within the mill were equipment and machinery owned by York and a large quantity of customer goods. On November 3, 1997, a fire destroyed the mill and its contents.

In connection with its operation of the mill, Arcade had obtained insurance from Security Insurance Company of Hartford (Security). As is relevant here, Security insured the business personal property of Arcade, York, and various other persons and companies for $4.42 million. The policy provided that "an insured loss will be payable 30 days after a satisfactory proof of loss is received, and the amount of the loss has been established either by written agreement with 'you' or the filing of an appraisal award with 'us'." J.A. 115. Although the parties dispute the exact date, by some time in the spring of 1998 it was clear to all concerned that claims would exceed the policy amount. However, a proof of loss was not filed until July 7, 1998.

On September 1, 1998, Security filed this statutory interpleader action naming Arcade; York; NationsBank, N.A. (NationsBank); and 43 other companies as defendants. As was its option, *see* 28 U.S.C.A. § 1335(a)(2), Security provided the district court with a non-interest bearing bond in the amount of the policy limit.

In January 2001, NationsBank moved for an order requiring Security to pay interest on the policy proceeds pending resolution of the interpleader action. Following negotiations between NationsBank and Security, Security deposited $5,107,849.12 with the court on March 19, 2001. This amount comprised the policy limit, plus $642,849.12 in interest, plus an additional $45,000. The interest amount was calculated by applying to the policy limit an annual rate of six percent, compounded monthly, from September 1, 1998 to March 1, 2001. NationsBank and Security agreed on a rate of six percent because it closely approximated the rate at which interest would have accrued on the policy proceeds had they been deposited with the district ~~court at the~~ outset of the interpleader action.

At a subsequent hearing, NationsBank and Security expressed their satisfaction with this agreement, but Appellants protested. Appellants maintained that interest should be calculated using the South Carolina statutory rate of 8.75 percent and should run from mid-January 1998, when (according to Appellants) Security knew that claims would exceed the policy limit. The district court rejected these assertions. The interpleader action was settled and the policy proceeds were distributed to the various claimants, subject to Appellants' appeal of the ruling regarding interest.

II.

Interpleader is a procedural device that allows a disinterested stakeholder to bring a single action joining two or more adverse claimants to a single fund. *See Chase Manhattan Bank v. Mandalay Shores Coop. Housing Ass'n (In re Mandalay Shores Coop. Housing Ass'n)*, 21 F.3d 380, 383 (11th Cir. 1994); *White v. FDIC*, 19 F.3d 249, 251 (5th Cir. 1994). Interpleader is an equitable remedy designed to protect the stakeholder from multiple, inconsistent judgments and to relieve it of the obligation of determining which claimant is entitled to the fund. *See* 4 James Wm. Moore et al., *Moore's Federal Practice* § 22.02[1], at 22-8 to 22-9 (3d ed. 2001).

Statutory interpleader--the type involved here--rests on diversity of citizenship. *See* 28 U.S.C.A. § 1335(a)(1); *Whirlpool Corp. v. Ritter*, 929 F.2d 1318, 1320-21 (8th Cir. 1991) (characterizing statutory interpleader as "a special brand of diversity jurisdiction"). Accordingly, state substantive law applies under *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 82 L. Ed. 1188, 58 S. Ct. 817, 11 Ohio Op. 246 (1938). *See Atlin v. Sec.-Conn. Life Ins. Co.*, 788 F.2d 139, 142 (3d Cir. 1986) ("Although federal interpleader is rooted in equitable grounds, use of that procedure does not justify a diversity court's rejection of controlling state substantive law."). And, because prejudgment interest is a matter of state substantive law, *see Hitachi Credit Am. Corp. v. Signet Bank*, 166 F.3d 614, 633 (4th Cir. 1999), South Carolina law

governs the award of prejudgment interest here,[1] *see, e.g.*, *Hartford Accident & Indem. Co. v. Sharp*, 34 V.I. 383, 87 F.3d 89, 92-93 (3d Cir. 1996) (concluding that claimant to interpleaded fund was entitled to prejudgment interest under territorial law); *Murphy v. Travelers Ins. Co.*, 534 F.2d 1155, 1164-65 (5th Cir. 1976) (looking to Texas law to determine if prejudgment interest was owed in diversity interpleader action).

Under South Carolina law, prejudgment interest on an obligation to pay money accrues at the rate of 8.75 percent per annum "from the time when, either by agreement or by operation of law, the payment is demandable, if the sum is certain or capable of being reduced to certainty, even if the parties do not agree on the amount of the obligation." *Brooklyn Bridge, Inc. v. S.C. Ins. Co.*, 309 S.C. 141, 420 S.E.2d 511, 513 (S.C. Ct. App. 1992); *see* S.C. Code Ann. § 34-31-20(A) (Law. Coop. 1987). The decision whether to award prejudgment interest lies in the discretion of the court. *See Jacobs v. Am. Mut. Fire Ins. Co. of Charleston*, 287 S.C. 541, 340 S.E.2d 142, 143 (S.C. 1986).

Here, Security agreed to pay interest of six percent per annum from the date it filed the interpleader action until the date it deposited the policy proceeds with the court. The question presented to the district court was whether Security should have been required to deposit an additional sum to equal the amount that would have been earned if interest had been calculated at a rate of 8.75 percent. However, although

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[1] The parties agree that the substantive law of South Carolina applies.

the dispute of the parties concerned only the *rate* of interest, their arguments were posed in terms of the broader question of whether Security should be obligated to pay prejudgment interest *at all*. Having considered the lengthy arguments of the parties, the district court denied Appellants' request. We cannot say that this ruling was an abuse of discretion.[2]

III.

For the reasons set forth above, we affirm the district court.

AFFIRMED

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[2] Thus, the six percent interest paid by Security pursuant to its agreement with NationsBank was *more* than Appellants were entitled to, not less.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

C/A No. 0:98-2545-17

[Filed April 9, 2001]

Security Insurance Company of Hartford Plaintiff,	)
v.	)
Arcade Textiles, Inc., et al. Defendants.	)

ORDER

This matter is before the court on Defendant NationsBank's Motion for Interest on the Policy Proceeds and a counterclaim by Arcade Textiles, Inc. ("Arcade") and York County Industries, Ltd. ("York"), for interest owed on the previously posted bond.[1]

[1] On September 1, 1998, plaintiff filed a bond in the amount of $4.42 million in lieu of depositing the cash funds in the court's registry.

Two weeks prior to the hearing, on March 19, 2001, plaintiff deposited $4,420,000 in principal, and $687,849.12 in interest in the court's Registry. Defendant NationsBank is satisfied that the funds deposited on March 19, 2001, likely equal or exceed the interest that would have accrued at the court Registry's interest rate. Plaintiff stipulated that it would not seek a refund if it should later be determined that the deposited sum exceeds the amount that would have been realized if the principal was initially deposited with the court.

Defendants Arcade and York argued that South Carolina's statutory pre-judgment interest rate of 8.75% per annum should apply, and that the interest accrues from the time when payment can be demanded. The court denied the motion for interest at the statutory rate of 8.75% and determined that interest should begin to run on September 1, 1998, the date on which this action was filed. The court directed a financial officer of the Clerk's office to calculate the interest from September 1, 1998 through March 19, 2001, based on the court's floating interest rate,[2] compounded weekly.

The court received information that if the principal amount of $4.42 million had been deposited in the Court Registry Investment System ("CRIS") on September 1, 1998, it would have earned approximately $553,794.53 in interest until March 19, 2001. Additionally, a registry fee in the

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[2] The Court Registry Investment System uses an interest rate which closely follows the interest rate paid on 3-month Treasury bills. The average annual interest rate for 3-month Treasury bills was: 1998 - 4.8853%, 1999 - 4.75%, and 2000 - 5.981%.

amount of $556.39 would have been charged (see attached memo). To the extent defendants seek additional interest on the policy proceeds, that motion is denied.

IT IS SO ORDERED.

/s/ _____
Joseph F. Anderson
United States District Judge

April 5, 2001
Columbia, South Carolina